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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAUL ONTIVEROS SOLIS,
EDUARDO GARCIA

Defendants.

CASE NO. 1:20-CR-00016-DAD-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER

DATE: May 11, 2020

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

This case is set for a status conference on May 11, 2020. On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters to a date after June 1. This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
4 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
5 the ends of justice served by taking such action outweigh the best interest of the public and the
6 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
7 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
8 ends of justice served by the granting of such continuance outweigh the best interests of the public and
9 the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
21 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
22 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
23 pretrial continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, hereby stipulate as follows:

27 ¹ The parties note that General Order 612 acknowledges that a district judge may make
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 1. By previous order, this matter was set for status on May 11, 2020.

2 2. By this stipulation, defendant now moves to continue the status conference until
3 September 28, 2020, and to exclude time between May 11, 2020, and September 28, 2020, under Local
4 Code T4.

5 3. The parties agree and stipulate, and request that the Court find the following:

6 a) The government has represented that the discovery associated with this case
7 includes investigative reports, photographs, video recordings, audio records, and other
8 investigative documents. All of this discovery has been either produced directly to counsel
9 and/or made available for inspection and copying.

10 b) As a result of the public health emergency, defense counsels' limited access to
11 their clients is inhibiting requires significant additional time to convey discovery to their clients,
12 and to consult with and review discovery and other case matters with their clients primarily by
13 telephone.

14 c) The government does not object to the continuance.

15 d) Based on the above-stated findings, the ends of justice served by continuing the
16 case as requested outweigh the interest of the public and the defendant in a trial within the
17 original date prescribed by the Speedy Trial Act.

18 e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
19 et seq., within which trial must commence, the time period of May 11, 2020 to September 28,
20 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
21 T4] because it results from a continuance granted by the Court at defendant's request on the basis
22 of the Court's finding that the ends of justice served by taking such action outweigh the best
23 interest of the public and the defendant in a speedy trial.

24 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
25 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
26 must commence.

27 IT IS SO STIPULATED.
28

1 Dated: April 28, 2020

2 MCGREGOR W. SCOTT
3 United States Attorney

4 /s/ KATHERINE E. SCHUH
5 KATHERINE E. SCHUH
6 Assistant United States Attorney

7 Dated: April 28, 2020

8 /s/ Virna Santos
9 Virna Santos
10 Counsel for Defendant
11 Saul Ontiveros Solis

12 Dated: April 28, 2020

13 /s/ Kevin P. Rooney
14 Kevin P. Rooney
15 Counsel for Defendant
16 Eduardo Garcia

17 **ORDER**

18 IT IS SO ORDERED that the Status Conference is continued from May 11, 2020 to **September**
19 **28, 2020 at 1:00 PM before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to
20 18 U.S.C. § 3161(h)(7)(A), B(iv).

21 IT IS SO ORDERED.

22 Dated: May 5, 2020

23 /s/ Barbara A. McAuliffe
24 UNITED STATES MAGISTRATE JUDGE